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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

Supreme Court, U.S.
FILED
FEB 26 1972
MICHAEL RODAK, JR., CLERK

OCTOBER TERM 1972

Nos. 72-486 AND 72-488

FEDERAL POWER COMMISSION,
Petitioner

v.

MEMPHIS LIGHT, GAS & WATER DIVISION, et al,
Respondents

TEXAS GAS TRANSMISSION CORPORATION
Petitioner

v.

MEMPHIS LIGHT, GAS & WATER DIVISION, et al,
Respondents

Motion For Leave To File Amicus Curiae Brief and Brief Of The Independent Natural Gas Association of America, Amicus Curiae, In Support of Petitioners

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February 1, 1973

FIDELITY PRINTING COMPANY, INC., HOUSTON

In The

Supreme Court of the United States

October Term 1972

Nos. 72-486 and 72-488

Federal Power Commission,
Petitioner

v.

Memphis Light, Gas & Water Division, et al,
Respondents

Texas Gas Transmission Corporation
Petitioner

v.

Memphis Light, Gas & Water Division, et al,
Respondents

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA IN SUPPORT OF PETITIONERS

The Independent Natural Gas Association of America ("INGAA") respectfully moves for leave to file the attached brief *amicus curiae* in this case. As indicated by letters contemporaneously filed herewith, INGAA has obtained consent of petitioners, Texas Gas Transmission Corporation and Federal Power Commission, and respondent, The Public Service Commission for the State of New York. Respondent, Memphis Light, Gas and Water Division has declined to consent.

INGAA is a non-profit association. Its members include most of the natural gas transmission companies subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act, 15 U.S.C. § 717, et seq. Their operations account for more than 90% of the gas transported and sold annually in interstate commerce in the United States.

INGAA has participated in the past as an intervenor or *amicus curiae* before this court and various United States Courts of Appeals. It undertakes to participate in cases which directly and significantly affect the interests and operations of its membership and which have substantial industry-wide consequences. This is such a case.

With few exceptions, INGAA's pipeline members have been required, as a result of the Commission's decisions in the *Alabama-Tennessee* and *Midwestern* cases,[1] to base their rates on the use of liberalized depreciation with flow-through rather than on normalization or straight line depreciation. All except two have made the election provided for in § 441(a) of the Tax Reform Act of 1969, with respect to post-1969 expansion property.

The Commission has acted in only one case since the issuance of Order 404 and the Opinions 578 and 578-A in the matter of *Texas Gas Transmission Corporation.* In a decision involving Transwestern Pipeline Company, it found following an evidentiary hearing that as a result of changed circumstances, including the intercession of the 1969 Tax Reform Act, the rationale of *Alabama-Tennessee* did not apply to Transwestern. It concluded *inter alia* that the

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[1] *Alabama-Tennessee Natural Gas Co.*, 31 FPC 208 (1964) aff'd. sub nom., *Alabama-Tennessee Natural Gas Co.* v. *Federal Power Commission*, 359 F.2d 318 (5th Cir. 1966), cert. den. 385 U.S. 847; *Midwestern Gas Transmission Co.*, 36 FPC 61 (1966), aff'd., *Midwestern Gas Transmission Co.* v. *Federal Power Commission*, 388 F.2d 444 (7th Cir. 1968), cert. den. 392 U.S. 928.

continuation of flow-through would discriminate against Transwestern's future ratepayers and accordingly permitted a return to normalization. *Transwestern Pipeline Company*, Opinions 597 and 597-A, 45 FPC 1170, 46 FPC 379 (1971). This case is pending on appeal before the Court of Appeals for the District of Columbia Circuit sub nom., *The People of the State of California, et al* v. *Federal Power Commission*, No. 71-1830.[2]

Other INGAA members have requests pending before the Federal Power Commission for permission to resume normalization accounting with respect to pre-1970 property and post-1960 non-expansion property. See e.g. *Texas Eastern Transmission Corporation* FPC Docket No. RP 70-29 *et al*, Examiner's Decision issued December 9, 1971. Inasmuch as their interests, which are not represented by Texas Gas or the Federal Power Commission, can be directly affected by the Court's decision in this case, it is considered appropriate to submit this *amicus curiae* brief.

INGAA therefore respectfully requests leave to file such brief *amicus curiae* in support of petitioners.

Respectfully submitted,

/s/ JEROME J. McGRATH

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February 1, 1973

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[2] By order issued January 23, 1973 the Court of Appeals postponed oral argument which had been scheduled for January 29, 1973 and stayed further proceedings pending action of this court in the *Texas Gas* case.